Supreme Court, U.S.
FILED

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No. 04-

IN THE

Supreme Court of the United States

LARRY CONWAY,

Petitioner,

v.

EDITH NUSBAUM, TRUSTEE FOR
DR. MARK NUSBAUM,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

LARRY CONWAY
6099 Shady Grove Road
Memphis, Tennessee 38120
(901) 650-0934/(901)-685-8714

Petitioner Pro Se

193336

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Is it the duty of a Trustee to uphold the integrity of the bankruptcy system and insure that all parties in the proceedings are treated fairly and free from fraud?

2. Whether .the good faith requirement of the bankruptcy law, is applicable in a case where a first mortgage creditor based upon a fraudulently signed contract and motion for relief from stay by a first mortgage holder to presale a Chapter 11 debtor's real property to another straw party before first mortgage creditor had rights to foreclose or own the property, for $125,000, which property was appraised at $4,000,000 "as is" and debtor had a bonafide contract to sell for $6,500,000 within the first 90 days of a chapter 11 reorganization?

3. Whether it is considered fraud when a creditor holds three to four valid mortgage payments checks uncashed, that were all timely received and goes into open bankruptcy court and admitted, they "did not try to deposit or cash checks, because they thought they were not good" and create a pretext for default and receives relief from stay?

4. Whether it is considered fraud when creditor refused to give debtor right to cure, time, date and place of contrived and closed sale of debtors property, transferring several millions of dollars of debtor's equity to themselves in this contrived, fraudulent and closed sale, after refusing to allow debtor his express contractual right to cure the pretextual default or give them time, date, place of the foreclosure sale or the exact amounts claimed, as is required by State Law?

5. Would these acts by creditor be considered plain fraud against the creditors of the estate and fraud in a title 11 case with intent to defeat the bankruptcy law, or is this the intent of the safe harbor provision of 11 U.S.C. § 363(m) that makes such a case moot, merely because they fraudulently foreclosed in bad faith and debtor did not and was unable to obtain a stay pending appeal? Especially, when all of these issues were expressly raised in the bankruptcy court and the appeals court below and a stay was denied, and these issues not addressed?

6. Is 11 U.S.C. § 363(m) a safe harbor or is the mootness doctrine a haven for criminals, for frauds and bad faith by a creditor working in concert with the United States Trustee and the Bankruptcy Judge, perverting their offices into criminal enterprises, taking and withholding official actions in a continuing scheme to defraud in Title 11 cases and defeat the bankruptcy law?

7. Where debtor has equity cushion, of 30 to 60 times the debt of a creditor, can relief from stay be given in a chapter 11 reorganization case during the first 90 days on improved property whose valuation has been certified by state licensed general appraisers in writing and in sworn testimony and is unrefuted?

8. If debtor has a bonafide contract to sell real property in a chapter 11 with $50,000 non-refundable earnest money, is it the duty of the court to give debtor a chance to sell said property and reorganize their affairs? Especially where there are multiple assets with 5 to 6 times debts which are 95+% fully secured and only a small amount of valid unsecured debts owed mostly to family and friends?

9. When the Bankruptcy Judge makes intentional factual errors in her order giving Relief from Stay to conceal fraud,, should this be considered a moot issue in a title 11 case or is fraud a criminal act in a title 11 case?

10. Whether a bankruptcy judge has the powers to rewrite the purpose and intent of the bankruptcy law, refuse reorganization of debtor's plan and involuntarily convert to a chapter 7, deny discharge and ten months later, order armed United States Marshals to break in and enter into debtor's property by armed force and seize/confiscate and loot everything in it, without taking inventory or having a meeting of creditors over a 2 year period, or giving accountability for the contents confiscated? And under threats, force and fear, dump all files and legal proof from debtors home and office file cabinet and desk into a tangled mess in the middle of the debtors floor at debtor's residence?

11. Does a bankruptcy judge have the jurisdiction or power to give relief from stay on debtor's property after the dismissal of a bankruptcy case months later, as was done in one of these appeals or does it merely become a moot issue because this judge retaliatorily converts debtor's case and denies discharge?

12. When the creditor does not establish or prove written verification of value as to the property's equity, should his verbal valuation be considered more valuable than written, certified appraisals given by State certified licensed appraisal experts filed in court and testifying under oath to these values?

13. Is 11 U.S.C. § 363(m) a safe harbor for frauds and bad faith that is challenged and judge malicious errors in

facts in furtherance of scheme to defraud in a title 11 case with intent to defeat the bankruptcy law, without addressing these issues, does 11 U.S.C. § 363(m) place a limit on appellate review and appellate remedies?

14. Has the United States Congress and the United States Supreme Court mandated that a debtor in a chapter 11 case has an exclusive period of not less than 90 days "or such later date as the court may determine for cause by order entered with in that 90 days, or such later date as the court may determine for cause by order entered within that 90 day period" to propose and file a reorganization plan during this exclusive period"? Is it the public policy and objective of bankruptcy law to attempt repayment of debts?

15. Is it possible for a first mortgage creditor without fraud and intent to defraud and defeat the bankruptcy law to receive relief from stay in a chapter 11 case during the first 90 days on a first mortgage lien of only about $150,000 on a real property/commercial building, 30 years old, structurally sound, of about 80,000 square feet, eight stories, concrete and steel, located on about two and one half acres of prime property, land alone was appraised for $2,330,000, worth minimally $2,160,000 to $10,000,000 as certified by four different State licensed general appraisers who completed and filed with the court, written appraisal/valuations and testified in court?

16. Whether creditor or straw purchaser should be allowed to profit from the $8,500,000.00+ and the $42,000,000 proposed shopping center and other business that is being built on debtor's prime real estate that has been fraudulently foreclosed on along with debtors two adjacent commercial real estate properties? One of the adjacent properties was a newly built less than 3 years old state of the

art, conveyor driven car wash worth 2-3 million dollars, in open violation of the automatic stay, in furtherance of scheme to loot all the assets worth 18 to 20 million and debts of 1 to 3 million of debtor and his wife and estates which they have now almost perfected in their continuing scheme to defraud in title 11 cases and defeat the bankruptcy law; Is this clear bankruptcy fraud, or what?

17. Is it legal for creditor's attorney to add $15,000+ attorney's fees to the balance of mortgage owed for relief from stay that had been prior paid by debtor, along with other overpayments to creditor which were never properly accounted for?

18. Is it blatant fraud when the court had prior ruled and the creditor and their attorney acknowledge and ruled that debtor's property hereunder had significant equity and value above said creditor's debt, yet falsely file with intent to defeat the congressionally mandated bankruptcy law a bad faith motion for relief from stay stating no equity in property?

19. Whether there exists a factual, legal or equitable basis for applying the exception to the bankruptcy mootness rule based upon fraudulent and bad faith motion for relief from stay filings, wherein real property is sold fraudulently after the lifting of the automatic stay?

20. Does a United States Bankruptcy Court and/or a lower court in Memphis, Tennessee have a duty to protect the rights of all citizens and follow the mandates of the United States Supreme Court, the United States Congress, the law and United States Constitution in Memphis, Tennessee or may they arbitrarily deprive citizens of their rights, the law and these mandates as was done in the court below?

21. Where a creditor and/or their attorney have unclean hands, do they lose their claims, defenses and rights, if they had any?

22. Whether equity will allow a party to profit from their wrongs or is there a remedy for every wrong to a parties rights?

23. Does it constitute a badge of fraud and actual fraud and civil and criminal contempt of court as provided by Title 18 U.S.C.S. § 401 for a creditor and or their attorney/s to knowingly and willfully violate and disregard, Title 11 U.S.C. § 362, the Automatic Stay/Injunction and sign and conspire to sign contract to sell debtor's property prior to foreclosure?

24. Does it represent intent to defraud in a title 11 case and defeat of the bankruptcy law when a creditor files bad faith motions for relief from stay and does not serve it as mandatory upon the debtor and all creditors as required 11 U.S.C. Bankruptcy Rules 2002(a) and § 4001(a)(1) and is this not constitutional right deprivation to due process of law?

25. Does the purpose and intent of Chapter 11 of Title 11 U.S.C. and public policy intend that debtor even if they have no equities in real property when they have multiple creditors and multiple assets, be given breathing spell and an opportunity to file plan attempting to reorganize their assets and business to repay all classes of creditors as voted upon and agreed by the creditors and the law?

26. If a bankruptcy judge issues an order knowingly, misstating and omitting material facts and law to cover-up, aid, abet and assist fraud in a title 11 bankruptcy case, is this

proof of their taking and withholding official action under color of official right and acting in furtherance of an ongoing conspiracy and scheme to commit bankruptcy fraud to defeat the bankruptcy law?

27. In a question of mootness before a court of equity and law, does the valid criminal code supercede the civil code in the determination of mootness?

28. Does the Appellate court have a duty and authority over a bankruptcy judge, trustee, and United States trustee, attorney, officers of the court, or others to mandate that they or others be investigated and in the best interest of justice and the public interest, be removed from their official positions of public trust; wherein there is found pervasive and willful official corruption, disregard of oaths of offices, neglects of duty, perversion and misuse of ones official offices?

29. Do creditors and their attorney/s have a duty not to willfully file false claims, oaths, and statements in a Title 11 case and if they do, does .it constitute fraud in a Title 11 case as provided 18 U.S.C. § 152, *et al.*?

30. What constitutes bankruptcy fraud and racketeering in a title 11 case and is this a moot issue for this court, if it is being perpetrated by court, trustees, government officials and private parties on an ongoing basis, openly in the bankruptcy court at Memphis, Tennessee by taking and withholding official actions under color of official right?

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The opinion of the United States courts of appeals appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court appears at Appendix B and C to the petition is unpublished

The opinion of the United States Bankruptcy Court appears at Appendix D and E to the petition is unpublished.

STATEMENT OF JURISDICTION

For Cases from **Federal Courts**:

1) The date on which the United States Court of Appeals for the Sixth Circuit entered its depositive opinion is August 19, 2004.

2) No petition for rehearing was timely filed in my case.

3) An extension of time to file the petition for a writ of certiorari was granted to and including 1/16/05 on 11/19/04 is Application No. 04A418.

4) The jurisdiction of this court is conferred by section 1254(1) of Title 28 United States Code.

Cases from **District Court**

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

4th, 5th, 6th, 13th, 14th Amendments to the United Constitution.

11 U.S.C. § 362(a); § 363(m); Local Bankruptcy Rules 4001(a)(1);9013(a)(b)(1); 18 U.S.C. §§ 2, 3, 4, 35(b), 152, 153, 155, 157, 241, 242, 371, 401, 872, 1001, 1341, 1342, 1503, 1509, 1512, 1513, 1621, 1622, 1623, 1951, 1951(b)(2), 1961, 1961(d), 1962, 1963, 3057, *et seq.* Title 28 U.S.C. §§ 157(d) withdrawal of case to district court, 455 disqualification of a judge.

STATEMENT OF THE CASE

The under appeals are a combination of two appeals and orders from the bankruptcy court, district court and appeals court that concerns the obtaining of relief from stay by respondents and their attorneys who filed a bad faith motion for relief from stay willfully with knowingly false claims and false statements as part of a continuing scheme and ongoing conspiracy to commit frauds in title 11 cases and defeat the bankruptcy law at Memphis, Tennessee. This scheme involves the certain creditors, private parties, attorneys, United States Trustee, bankruptcy Judges (at least 2) who are working in concert and have preagreed to outside the judicial process to willfully take and withhold official actions under color of official right, and perversions of their official powers, with intent to commit frauds and defeat the bankruptcy law. That their operations have made Memphis "*The foreclosure and bankruptcy capital of America*". In recent times. Which for this ring of fraud and corruption have made a certain group of bankruptcy attorney

practitioners and certain businesses acting in concert, wealthy, millionaires and multimillionaires and it is estimated that this pattern of racketeering ring and their continuing enterprises and associations in fact as defined 18 U.S.C. §§ 1961, 1961(d), 1962, 1963, *et seq.* are estimated to be economically looting the local and national economy of over 100 million dollars a year. That, this ring of corruption has so much corrupt power in Memphis, Tennessee because it has the power to economically and legally terrorize the citizens, especially, African Americans that even the lawyers, themselves are afraid to challenge, and speak out or go against these criminals, for fear of professional, economic and political suicide. This appeal and case is but the tip of the iceberg of what has happened below and is still continuing in retaliation for petitioners Larry Conway and His wife Marilyn Conway, officially filing sworn affidavits and speaking out of continuing frauds and criminal corruption at Memphis, Tennessee in the Federal Bankruptcy Courts as is mandatorily required by Title 18 U.S.C. § 3057 as Trustees for one of their almost wholly owned corporation known as Jacmar Enterprises Inc., that was forced into bankruptcy because a group of powerful politically connected businessmen and government officials wanted their commercial property for their own use and did not want to pay for it. They openly committed every kind of illegal and malicious act to take these properties that no other independent African American businessmen in the history of Memphis has ever owned or now owned. This prime property primarily included the subject property of these appeals that is prime high traffic, highway commercial zoned on the interstate highway that is planned to be built a new $400 million dollar light rail to the airport and which everything around it from downtown and the medical center has over 3 billion dollars on the drawing board, under

construction or newly completed from the $1.4 billion St. Jude hospital to the $250 million FedEx Forum home of the NBA Grizzles. There is very little large prime property that exists underdeveloped in Memphis, Tennessee, unless you tear something down. This property sat 100 feet away from the richest social club in the South, that does not admit generally African American as members and only in recent years admitted two African American couples to prevent their other members from being denied appointments to public boards and commissions.

Certain members of this social club targeted the petitioners to force them to sell his property to them for 1 million or make them a controlling partner and because of their political and economic power, direct city and government officials to start harassing illegally breaking into and filing groundless and bogus quasi-legal code citations and blackballed, i.e. openly illegally boycott and run us out of business.

They point blank extortionately told us if we made them partners they could make all our problems go away and if not they would take our hotel, tear it down or condemn it if necessary, even though it was a structurally sound class "A" constructed, steel and concrete building, less than 30 years old, 8 stories and state certified appraised for $4,000,000 "as is" giving the land a value of $2,330,000.

The powers of these businessmen are so great in Memphis, Tennessee that they have formed a machine of corruption that has its genesis in the "Old E.H. Crump Machine" from the 1920 to 1950, that today has a gangster political boss that is above the law and makes policy for the city and systematically loots its and has most of the politicians

in his pocket and has become the largest landowner in Shelby County and the richest man in the city with several billionaires.

As a result of all this to teach debtor a lesson, the United States Trustee's Attorney, Sean Haynes, who is the king pin and ringleader of the bankruptcy fraud at Memphis, Tennessee openly, extortionately threatened petitioners that "he would teach him a lesson" and threatened any attorney especially African American of which there are only a few that you can count on one hand that are allowed to regularly practice and file Chapter 11 cases and each one at least 3 were not allowed to represent petitioner, his estate or business and in each instance the case was dismissed under pretext to cover-up and defraud and defeat the bankruptcy law at Memphis, Tennessee by stating failure to have attorney which is contrary to the purpose and intent of the bankruptcy law.

The bankruptcy judge Jeannie Latta openly insulted on the record petitioner and his attorney in his very first ever filed chapter 11 the year 2001 after one of the lawyer members of this racketeering gang on the express orders of Sean Haynes and Ellen Vergos authorized them to willfully, fraudulently, extortionately and contempt of the federal judiciary foreclose upon debtor 2 to 3 million dollar newly built business property adjacent to the hotel, the subject property and bankruptcy judge Jeannie Latta refused to uphold the congressionally mandated federal court order injunction of 11 U.S.C. § 362(a) The automatic stay and after further and continuing violations dismissed the chapter 11 case only 6 weeks after it was filed to prevent petitioners obtaining mandatory damages as provided 11 U.S.C. § 362(h) and to protect the fraud and defeat the bankruptcy law.

At the so-called kangaroo court hearing, bankruptcy judge Jeannie Latta extortionately told petitioner on the record that she "was not going to allow the petitioner to use the bankruptcy court to stop the foreclosure of their property." Moreover at this same hearing, judge Latta venomously oppressed and openly insulted both petitioner and his African American attorney, Gerald Green and stated "neither you or your client has the acumen or sophistication to be in a chapter 11 case". She went on to say that " unfortunately, there were no African American attorneys qualified in Memphis to practice chapter 11 bankruptcy law".

The United States Trustee Ellen Vergos and Sean Haynes ratified this fraud and defeat of the bankruptcy law. In the subsequent filed chapter 11 reorganization hereto that petitioners/debtor timely filed and proposed a plan paying off all valid creditors and debts 100%, the United States Trustee and Judge Latta in concert for reporting them for frauds, extortion under color of official right and racketeering and conspiracy to the United States Attorney and FBI under sworn oath of penalty of perjury as required 18 U.S.C. § 3057 as Trustee/s in Possession. Soon thereafter the United States Trustee and Judge Jeannie Latta pretextually converted the case to a chapter 7 and refused to allow the creditors opportunity to vote on or approve the reorganization plan which was timely submitted by debtor. This reorganization plan was in the best interest of the debtor and the debtor's estate. The Judge Jeannie Latta and United States Trustee's attorney Sean Haynes had prior allowed relief from stay on a similar series of bad faith, fraudulent motions for relief from stay with the same "modus operandi", did not give timely notices to all the creditors, though mandatory, did not have a valid appraiser or good faith reason to file. In each case the creditors were over secured and in each instance the

bankruptcy judge Jeannie Latta and the United States Trustee and their attorney Sean Haynes took and withheld official actions and granted relief from stay in these prior cases. Judge Jeannie Latta even annulled the stay in the prior case for the fraudulent foreclosure in open violation of the automatic stay for the law firm who did so that represented a creditor against petitioner, though they were the prior attorneys for petitioners and their business with knowledge of proprietary information concerning petitioner. This was after they openly violated the stay in the instant chapter 11 case that was converted as reward benefit and/or payoff to the United States Trustee, Ellen Vergos went directly to work for this same law firm as part of the continuing scheme to defraud and defeat the bankruptcy law at Memphis.

That the petitioner's case was maliciously converted for the express purpose of defeating and attempting to make petitioner's case moot and deprive petitioner of any rights to remedy and redress and loot the rest of their multimillion dollars of assets and property in furtherance of the continuing scheme to defraud in a title 11 case and defeat the bankruptcy law at Memphis.

The proof of this intent is the pervasive ongoing frauds and defeat of the bankruptcy law and the rewriting of the United States Constitution and the over ruling of the United States Congress and the United States Supreme Court can be and will be found in the record which will clearly show and expose this ongoing scheme and conspiracy.

Further, by the fact that to date the petitioner has lost over 18 million dollars of certified and appraised assets, real and personal with the payoff of only about 1 million dollars of debts and petitioners has been forever left with almost

3 million dollars of debt with no assets, because these corrupt officials in concert have retaliatorily deprived petitioner of fundamental constitutional rights to an attorney, due process and equal protection of law.

After the debtor chapter 11 case was dismissed the United States Trustee and Judge Jeannie Latta hand picked without hearing, P. Preston Wilson, one of their racketeering members to perfect the looting and even before the date set for first meeting of creditors he abandoned this claim, property and the rights thereto, with no appraisals and no inventory of assets from the date of conversion of 11/7/02 to the present 3/16/05.

That no mandatory inventory of chapter 7 assets has ever been completed and filed with the United States Trustee, though the bankruptcy law mandatory requires that the chapter 7 trustee must file this inventory report within 30 days as provided 11 U.S.C. Bankruptcy Rule 2015(a).

Moreover, no mandatory meeting of creditors with debtor under oath has never been held to date from 11/7/02 date of chapter 7 malicious and retaliatory, extortion under color of official right conversion. This meeting of creditors is mandatorily required to be held within 20 to 40 days as provided 11 U.S.C. Bankruptcy Rule 2003(a)(b)(c) and the time for holding this meeting cannot be enlarged by the judge as mandatory provided 11 U.S.C. Bankruptcy Rule 9006(b)(2).

This Chapter 7 case should have been dismissed by law about 60 to 90 days after 11/7/02 but instead has been continued by this ongoing lawless conspiracy to date. On 8/2903 the bankruptcy judge Jeannie Latta in excess of her jurisdiction and the law gave an order to P. Preston Wilson to break into by armed force and search debtor's home with

armed United States Marshals. During their search, the chapter 7 trustee still did not take or file inventory of debtor's personal assets within debtor's residence. On 2/3/04 of last year Judge Jeannie Latta denied debtor discharge of any and all debts. This ruling should have ended the chapter 7 case, the automatic stay and her lawful jurisdiction as provided 11 U.S.C. § 362(c)(2)(c) and Rule 4006.

However, to openly, unconstitutionally, unlawfully and extortionately, retaliate and rob debtor, Judge Jeannie Latta took and withheld official action under color of official right and issued an order to P. Preston Wilson, the chapter 7 trustee, to break into with armed marshals with deadly force if necessary and rob, steal, loot and defraud debtor of all of his property, his wife's property and any other property located in the home of debtor. Even though debtor's wife was in a separate chapter 11 reorganization in a different judge's courtroom, Judge William Houston Brown.

It has been two years since the conversion of the chapter 7, with no exemption of property to debtor. On October 27, 2004 Judge Jeannie gave yet another order by surprise, with no notice to debtor to P. Preston Wilson to break into debtor's home with armed Marshals in the early morning hours with moving trucks to loot, seize, confiscate all the property inside of debtor's 8,000 square feet home. They took even the mirrors off the bathroom walls, dishes, office furniture, artifacts, fine art etc.

Bankruptcy Judge Jeannie Latta held a hearing on short notice on the 18th of November and gave P. Preston Wilson orders to sell all the valuable personal property, with no accounting or inventory of property, in a yard sale type

auction which property was worth 3 to 5 million dollars but sold for approximately $300,000 to $500,000 dollars.

To date no inventory or accounting of property or monies have been filed or obtained. This unprecedented lawless and unconstitutional assault, outrage and continuing racketeering conspiracy and bankruptcy fraud can only be stopped by this court.

This has now risen to the level of gross human rights violations and is seeming being sanctioned by the United States Government and courts below.

Judge Jeannie Latta has now conspired with Judge William Houston Brown at Memphis, Tennessee to convert the Chapter 11 case of debtor's wife Marilyn Conway on 1/13/05 after all her possessions have been confiscated in violation of the automatic stay 11 U.S.C. § 362(a) to a chapter 7 and have transferred it to Judge Jeannie Latta's court room and appointing 1'. Preston Wilson as the Trustee. They have joined her case with debtor's case that has been dismissed by law upon denial of discharge on 2/3/04, as provided 11 U.S.C. Bankruptcy Rule 4006 and 362(c)(2)(c). To date, Judge Jeannie Latta is continuing to exercise unlawful, unconstitutional and criminally oppressive, dictatorial jurisdiction and authority over debtor' life, liberty, property, rights and interest.

The power of these judges reaches are so strong, they took a wrongful foreclosure action out of State court after the bankruptcy court had already granted relief from stay and abandonment of real property appraised at the time of $2,100,000 and foreclosed on for $750,000 and the disputed debt of about $1,500,000 on a disputed claim, wherein the creditor never filed a proof of claim in Marilyn Conway's chapter 11 case.

And at no time were there ever any mandatory required 20 day notices given to either the debtor or creditors to object which was only about 3 week after the first ever filing of a chapter 11 reorganization petition of Marilyn Conway.

11 U.S.C. §§ 2002(a)(c) and 3001(e)(h) and 3003(a)(b)(1)(c)(2) mandatory requires filing proof of claim and giving notices to file objections to creditors and debtor.

Further, these ruling are intended to obstruct justice and deprive petitioners/debtor of all rights property and claims and remedies, including due process and equal protection of law.

The herein fraudulent taking of petitioners 80,000 square feet 8 story, concrete and steel commercial building in prime location worth 4,000,0000+ "as is" and $16,500,000 on completion of repairs, that was not in default, is part of the same continuing fraud scheme, flushed nakedly into the open.

This is the only court who can remedy and rectify this grave constitutional problem. This matter is of great public importance, every lawyer, businessman, politician and informed citizen of Memphis is well aware of this open and naked fraud, criminal oppression against petitioners/debtor and their family. The public faith will never be restored in the federal judiciary and government at Memphis if this court does not stop this racketeering cancer that respondent and their attorney are actors in the first degree and willing participants and beneficiaries and should be made to answer for their wrongs and unclean hands.

REASONS FOR GRANTING THE PETITION

1. To vindicate and protect the public interest and petitioners from continuing harmful and unlawful acts and make them citizens with rights again.

2. To restore the public faith and trust in the law, the government and federal judiciary.

3. To send a message to all public officials and judges across America that no one is above the law and that judges and public officials cannot act lawlessly and exceed their jurisdiction and pervert their powers, take and withhold official action, under color of official right and undermine the government and defraud the United States Government of its right to have the lawful functions of the judicial power of the United States exercised and administered free from unlawful impairment and obstruction and more particularly its right to the conscientious, faithful, disinterested and unbiased judgment and action of the parties herein responsible, free from corruption, partiality, improper, influence, bias, dishonesty, fraud and conspiracy so to do.

4. To hold the respondents responsible for their unprecedential wrongful actions and unclean hands and take the profit out of their ill gotten gains and intentional harm, injury, damage and wrong to petitioners.

5. To send a message to the courts below that frauds and criminal misconduct sworn to under penalty of perjury must be looked at seriously and not disregarded or suppressed especially in Title 11 cases that Congress has mandated are criminal acts.

6. To resolve the conflict between mootness rule, application of the Sixth Circuit Court of Appeals in this case and the Ninth Circuit Court of Appeals as in regards M. Capital Corporation (2003 BAP 9th Cir.) BAP CC-02-1234 MOKMA CC-02-1199 MOKA (Consollidated) Bankruptcy # SA99-16415 and *In re: Thomas v. Namba*, 287 B.R. 782 (9th Cir. BAP 2002).

7. That the courts and other practitioners below be reminded that the law and especially provisions of congressionally mandated law must be expressly followed and cannot be excepted.

8. To send a message to the world that the United States Constitution and laws are not just slogans and propaganda but are real, applicable and fundamental to a civilized society and its continuation and well being.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

LARRY CONWAY
6099 Shady Grove Road
Memphis, Tennessee 38120
(901) 650-0934/(901)-685-8714

Petitioner Pro Se

APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT FILED AUGUST 19, 2004

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 03-5072

LARRY PAUL CONWAY,

Appellant,

v.

MARK NUSBAUM, Dr.,

Appellee.

Before: KEITH, MARTIN, and ROGERS, Circuit Judges.

ORDER

Larry Paul Conway, a Tennessee resident proceeding pro se, appeals the district court's order dismissing his appeal from the bankruptcy court's order granting the trustee's motion to lift the automatic stay in this bankruptcy case filed under Chapter 11 of the Bankruptcy Code. The trustee has filed a motion for award of damages and costs pursuant to Fed. R.App. P. 38. The trustee has also filed a motion seeking to enjoin Conway from filing any motions, appeals or other pleadings in connections with this case. Conway has responded to these motions. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the

Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed. R.App. P. 34(a).

Conway commenced this Chapter 11 bankruptcy case by filing a voluntary petition for relief on November 7, 2001 (Bankruptcy Case No. 01-37379). On February 19, 2002, the trustee obtained an order granting a motion to lift the automatic stay. Conway filed a notice of appeal from this order with the district court on March 28, 2002. Conway's Bankruptcy Case No. 01-37379 was dismissed on January 30, 2002. Conway filed a new bankruptcy case on February 26, 2002, Bankruptcy Case No. 02-23359, and by virtue of the second bankruptcy filing, the district court dismissed the appeal as moot. This appeal followed.

In a bankruptcy proceeding, the bankruptcy court is the finder of fact. *Hardin v. Caldwell (In re Caldwell),* 851 F.2d 852, 857 (6th Cir.1988). When a district court acts as an appellate court as it does in a bankruptcy proceeding, it reviews the bankruptcy court's factual findings under the clearly erroneous standard, and its conclusions of law de novo. *Id.* "[I]n appeals from the decision of a district court on appeal from the bankruptcy court, the court of appeals independently reviews the bankruptcy court's decision, applying the clearly erroneous standard to findings of fact and *de novo* review to conclusions of law." *IRS v. Century Boat Co. (In re Century Boat Co.),* 986 F.2d 154, 156 (6th Cir.1993) (brackets in original). This court reviews the district court's legal conclusions de novo. *Mapother & Mapother, P.S.C. v. Cooper (In re Downs),* 103 F.3d 472, 477 (6th Cir.1996).

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Upon review, we conclude that the district court properly dismissed the bankruptcy appeal in Bankruptcy Case No. 01-37379 as moot. In general, a bankruptcy appeal, like any other appeal, becomes moot if the appellate court is unable to grant effective relief because of events during the appeal. *See Unsecured Creditors' Comm. of DeLorean Motor Co. v. DeLorean (In re DeLorean Motor Co.),* 755 F.2d 1223 (6th Cir.1983). Here, because Conway filed a new bankruptcy case on February 26, 2002, Bankruptcy Case No. 02-23359, the appeal filed by Conway with regard to the bankruptcy order granting the motion to lift the automatic stay in Bankruptcy Case No. 01-37379 became moot.

The trustee's motion for damages and double costs should not be granted. The trustee filed a separate motion as required by Fed. R.App. P. 38. Rule 38 permits a court of appeals to award an appellee just damages and single or double costs in the case of a frivolous appeal. *See Barney v. Holzer Clinic,* 110 F.3d 1207, 1212 (6th Cir.1997). This court considers an appeal frivolous if it is obviously without merit and is prosecuted for delay, harassment, or other improper purposes. *Id.* (citing *NLRB v. Cincinnati Bronze, Inc.,* 829 F.2d 585, 591 (6th Cir.1987)). Here, sanctions will not be imposed. Although the appeal is obviously without merit, it does not appear to have been prosecuted for delay, harassment, or other improper purposes.

Lastly, in a supplemental motion to the Rule 38 motion, the trustee requests this court to enjoin Conway "from filing any motions, appeals or other pleadings in connection with this case, except upon proof of payment to the trustee of any sanctions ordered by this court and leave of court in which

he seeks to file the pleading or appeal". While a court cannot absolutely foreclose an individual from initiating an action or pursuing an appeal in federal court, *Ortman v. Thomas,* 99 F.3d 807, 811 (6th Cir.1996), the court may impose prefiling restrictions on an individual with a history of repetitive or vexatious litigation. *Feathers v. Chevron U.S.A., Inc.,* 141 F.3d 264, 269 (6th Cir.1998); *Ortman,* 99 F.3d at 811. It does not appear from the record that Conway has a history of repetitive or vexatious litigation. Therefore, the request for an order enjoining Conway from filing any motions, appeals or other pleadings in connection with this case is denied.

Accordingly, the district court's order dismissing Conway's bankruptcy appeal is affirmed pursuant to Rule 34(j)(2)(C), Rules of the Sixth Circuit. The pending motions are denied.

ENTERED BY ORDER OF THE COURT

s/ Leonard Green
Clerk

APPENDIX B — ORDER DISMISSING APPEAL OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION FILED FEBRUARY 12, 2003

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

District Court No. 02-CV-2358-M1

LARRY CONWAY,

APPELLANT,

v.

ELLEN B. VERGOS, UNITED STATES TRUSTEE FOR REGION 8,

APPELLEE.

ORDER DISMISSING APPEAL

This matter came before the Court upon the Motion to Dismiss Appeal ("Motion") fled by Appellee, Ellen B. Vergos, United States Trustee for Region 8; the Memorandum in support thereof; and the entire record in this cause.

It appears to the Court that cause exists to grant UST's Motion and dismiss the appeal on the grounds that: (i) on January 30, 2002, the United States Bankruptcy Court entered its "Order Granting United States Trustee's Motion to Dismiss or, in the Alternative, Convert Chapter 11 Case to

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Case under Chapter 7" ("Dismissal Order") in bankruptcy case no. 01-37379-JDL; (ii) on February 11, 2002, the Appellant Larry Conway ("Conway") filed a Notice of Appeal from the Dismissal Order; (iii) on February 26, 2002, Conway filed a new Chapter 11 bankruptcy case, case number 02-23559JDL; and (iv) by virtue of the second bankruptcy filing in case number 02-23559-JDL, the appeal filed by Conway with regard to the Dismissal Order entered in bankruptcy case number 01-37379-JDL is moot. *Gateway North Estates, Inc. v. Jude (In re Gateway North Estates)*, 39 F.3d 1181 (unpublished opinion), 1994 WL 610167 (6th Cir. 1994).

IT IS, THEREFORE, SO ORDERED that UST's Motion shall be and is hereby granted, and the instant appeal shall be and is hereby dismissed as moot.

s/ Jon P. McCalla
HONORABLE JON P. McCALLA
UNITED STATES DISTRICT COURT JUDGE

Date: Feb. 12, 2003

APPENDIX C — ORDER DISMISSING APPEAL OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION FILED DECEMBER 23, 2002

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Case No.: 2:02 CV 2359 – M1/V
(Appeal from Bankruptcy Case No. 01-37379-JDL)

LARRY CONWAY,

Appellant,

vs.

EDITH NUSBAUM, Trustee for Mark Nusbaum,

Appellee.

ORDER DISMISSING APPEAL

This matter came to be heard upon the motion of Appellee, Edith Nusbaum, Trustee for the Trust of Dr. Mark Nusbaum ("Nusbaum"), to dismiss this appeal as moot.

WHEREAS, it appears to this Court from Nusbaum's motion and memorandum, statements of counsel and the entire record that Nusbaum's motion is well taken and should be granted on the grounds that: (i) On February 19, 2002, Nusbaum obtained an "Order Granting Motion to Lift Stay" in Appellant, Larry Conway's Bankruptcy Case Number

01-37379; (ii) Conway filed a Notice of Appeal from such Order with this Court on March 28, 2002; (iii) Conway's Bankruptcy Case Number 01-37379 was dismissed on January 30, 2002; (iv) Conway filed a new bankruptcy case on February 26, 2002, Bankruptcy Case No. 02-23359-JDL; and (v) by virtue of the second bankruptcy filing in Bankruptcy Case No. 02-23359, the appeal filed by Conway with regard to the Order entered in first Bankruptcy Case No. 01-37379 is moot. *Gateway North Estates, Inc. v. Jude (In re Gateway North Estates)*, 39 F.3d 1181 (unpublished opinion), 1994 WL 610167 (6th Cir. 1994).

IT IS, THEREFORE, ORDERED that this appeal is hereby dismissed as moot.

s/ Jon P. McCalla
HONORABLE JON P. MCCALLA
U.S. DISTRICT COURT JUDGE

Date: Dec. 20, 2002

APPENDIX D — ORDER GRANTING RELIEF FROM AUTOMATIC STAY OF THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION FILED JUNE 7, 2002

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Case No. 02-23559-L
Chapter 11

In re

LARRY PAUL CONWAY,

Debtor.

ORDER GRANTING RELIEF FROM AUTOMATIC STAY

BEFORE THE COURT is a motion for relief from the automatic stay of 11 U.S.C. § 372(a) filed May 1, 2002, on behalf of Edith Nusbaum (hereinafter "Trustee"), Trustee for the benefit of Dr. Mark Nusbaum. Appearing for the Trustee was Mr. David M. Dunlap; appearing for the Debtor was Ms. Wanda Abioto. The court heard testimony over a period of four days and made a visit, accompanied by counsel, to the hotel property which is the subject of this dispute. In addition, the court agreed to receive transcripts of the testimony of two real estate appraisers with respect to the value of the property given in the prior bankruptcy case of Jacmar Enterprises, Inc. (hereinafter "Jacmar"). Pursuant to

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FED. R. BANKR. P. 7052, the court makes the following findings of fact and conclusions of law. This is a core proceeding. 28 U.S.C. § 157(b)(2)(G).

FINDINGS OF FACT

The Debtor commenced this Chapter 11 bankruptcy case by filing a voluntary petition for relief on February 26, 2002. An earlier Chapter 11 petition, filed by the Debtor on November 7, 2001, was dismissed on January 30, 2002, upon the motion of the United States Trustee. In addition, Jacmar filed a Chapter 11 bankruptcy petition on June 21, 2000, which also was dismissed upon motion of the United States Trustee on February 9, 2001. The Debtor's primary source of income is distributions from the People's Place Car Wash, a business operated by the Debtor's wife. Schedule I projects combined income for the Debtor and his wife of $13,2000.00 per month. Schedule J reflects expenses of $16,913.33 per month. The Summary of Schedules shows assets of $13,882,267.00 exceeding liabilities of $3,818,004.69 by $10,064,262.31. As of this date, the Debtor has filed two operating reports. The first report, for the month ended March 31, 2002, reflects income of $7,323.00 (excluding loan proceeds of $950) and expenses of $8,758.40. The second report, for the month ended April 30, 2002, reflects income of $7,100.00 and expenses of $7,772.37. The Debtor's expenses exceeded his income in both months. The Debtor has continued in possession of his property. But has not yet proposed a plan of reorganization.

The Trustee is the holder of a promissory note dated November 7, 1997, in the original principal amount of

$140,000.00 made by Jacmar, by Larry Conway, President,[1] payable to the order of Irving Goodman, Trustee, the predecessor trustee to Mrs. Nusbaum. The promissory note is secured by a first priority lien of a deed of trust on real property known as 1318 Lamar Avenue, Memphis, Tennessee. A non-operating hotel building formerly known as the Coach and Four is located on the property. The property was vacant at the time that it was purchased by Jacmar on November 7, 1997, for a purchase price of $210,000.00. Other than placing a fence around the property, boarding windows and removing debris, no physical improvements have been made to the property since its purchase. On June 16, 2000, five days prior to the filing of the Jacmar bankruptcy petition, Jacmar conveyed a 30% interest in the property to the Debtor via quitclaim deed. The Trustee maintains that this transfer was prohibited by the deed of trust, but this determination is not necessary to the court's consideration of the instant motion. It is clear that the Debtor has no personal liability for the indebtedness owed to the Trustee.

In each of the three bankruptcy cases described above, the Trustee has sought relief from the automatic stay. In the Jacmar case, the court heard testimony on October 30 and November 1, 2000, and then continued the hearing until November 29, 2000, to give Jacmar an additional opportunity to come forward with a loan commitment or written capital investment agreement as evidence renovation of the hotel property was economically feasible and necessary to the reorganization of Jacmar. On November 29, 2000, the parties

1. Larry Conway is not an officer of Jacmar at the present time. His wife, Marilyn Conway, is vice president and the office of president is vacant.

announced a settlement, but were unable to agree on the language of a consent order. On December 19, 2001, the court entered its order reflecting the termination of the automatic stay by operation of law in accordance with 11 U.S.C. § 362(e). A subsequent motion for relief from the judgment and for new trial was denied. Jacmar appealed, but the appeal was dismissed as moot. On March 16, 2001, Goodman, Jacmar, the Debtor and his wife entered into an Agreement to cure the monetary defaults in the promissory note, whereby, among other things, Jacmar delivered to Goodman twelve post-dated checks drawn by Helm Enterprises, Inc. in various amounts dated the seventh day of March 2001 and of each succeeding month thereafter. In addition, Jacmar agreed to make provision for payment of delinquent real property taxes in the amount of $15,664.94 plus penalties, interest and assessments, on or before April 14, 2001. Jacmar was to provide a copy of any agreement reached with the taxing authorities and proof of each payment made toward the outstanding taxes to Goodman. In addition, the parties entered into a "Modification to Note dated November 7, 1997" to increase the principal balance of the note to reflect capitalization of certain expenses of Goodman and to reflect the other terms of the Agreement. According to Mrs. Marilyn Conway, the Debtor's wife, the Modification of Note and Agreement were entered into under "stress and duress." The only "duress" described by Mrs. Conway, however, was the fear of Jacmar losing its property to foreclosure. She did not describe any threat of physical harm or inability to consult counsel. The court finds that the Modification of Note and Agreement were freely entered into by the parties.

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Default has occurred under the Agreement and promissory note as modified. Specifically, the November 2001, and January and February 2002, checks were returned upon presentation for insufficient funds. In addition, Jacmar has failed to pay real property taxes and has defaulted in the terms of its Repayment Plan Agreement with the Shelby County Trustee with respect to real property taxes. The Trustee gave notice of default and demand for payment to Jacmar and Helm Enterprises on November 16, 2001, and again on November 30, 2001. Mr. Conway's first Chapter 11 case was filed on November 23, 2001. As described above, after the dismissal of this case, Jacmar again defaulted when the January and February checks were also returned unpaid for insufficient funds.

The current outstanding balance under the promissory note is $149,900.00, principal and interest. There are outstanding property taxes owed in the amount of $22,273.79. Further, an additional deed of trust encumbers the hotel property securing a debt to Helm Enterprises in the amount of $982,000.00. Thus, the total indebtedness secured by the hotel property is not less than $1,154,173.79.

Concerning the value of the hotel property, the Trustee presented the following proof: (1) the original purchase price of $210,000.00 on November 7, 1997; (2) the testimony of Todd Gildewell, M.A.J., commercial real estate appraiser, given October 30, 2000, indicating a value of between $177,000.00 and $229,000.00 consisting of land value less demolition costs; and (3) the testimony of Mr. Alan Goldreich that he has received an offer of $225,000.00 to purchase the property free and clear of all liens and encumbrances in the

event the Trustee is the successful bidder at a foreclosure sale. In response, the Debtor presented the following evidence concerning the value of the property: (1) the testimony and written market analysis report of Bill Sexton, State Certified General Appraiser, dated October 12, 2000, indicating a value "as is" of $2,160,000.00, and a value "upon completion of renovations" of $9,842,000.00; and (2) the testimony and written report of Rick Howarth, MBA, ASA, indicating an "'as completed' prospective date August 2002" value of $16,500,000.00, and an "'as stabilized' prospective date August 2004" value of $17,745,000.00. The court has reread the prior testimony of Glidewell and Sexton.

All of the expert witnesses agree on the following. The property is vacant. It has no electrical power. It has no windows. There is evidence of fire damage. The ceilings are in disrepair. The windows are boarded up, but according to the Debtor the boards are frequently removed by unknown persons. Plumbing fixtures, lavatories and toilets have been removed or are broken. The electrical fixtures have been removed. Glidewell reported evidence of vagrants living in the building at the time of his inspection. When the court visited the property on June 5, 2002, all of the conditions described by the expert witnesses were observed. The hotel contained a significant amount of debris consisting of broken glass and fixtures; torn carpeting; broken ceiling tiles, soda machines and furniture; empty food containers; old clean supplies; and clothing. A large number of the rooms, even on the lower floors, were open to the elements. On the second floor, there was evidence of persons living in the building. On the other hand, the building did appear to be structurally sound.

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The Debtor apparently told Sexton at one point in time that he and/or Jacmar intended to spend $7.5 - 8 million in renovating the property. Sexton agreed that renovation at that level would produce a functional hotel property and Glidewell relied upon this representation. Although Howarth's report includes a cost estimate for improvements to the property in the amount of $6,992,280, apparently prepared by a James A Hoitzman, A.I.A., it is not clear what use, if any, was made of this information. In his Cost Analysis, Howarth derives a "Total Estimate of Replacement Cost New for the Building and Improvements" of $18,203,015 and an indicated value via the cost approach of $16,500,000. Because Howarth did not attempt to value the property as is in his written report, the court cannot determine how much of the estimated cost represents new investment. The primary difference between the approach of Sexton and Howarth on the one hand, and that of Glidewell on the other was that Sexton and Howarth believed that the property could be feasibly renovated assuming the structural integrity of the building, and Glidewell did not. Sexton and Howarth assumed that the renovated hotel would compete in the downtown convention market, while Glidewell felt that the renovated hotel would more likely compete in the medical center market. All the appraisers agree that the property is closer to the medical center than it is to the downtown entertainment district. The choice of market for comparison is crucial to the evaluation of this property. If the property would be capable of obtaining convention business, it would be expected to achieve higher revenues than if it were merely able to attract medical center customers. Because Glidewell looked at room revenue of comparable hotels in the medical center area, he derived a potential value for the hotel, as

renovated, of $7.2 million, which was less than the projected renovation costs of $7.5-8 million. Thus, Glidewell concluded that the building added no value to the value of the land, but rather represented a liability equal to the cost of demolition. Sexton, on the other, using different hotels as comparables, derived a value for the subject upon completion of $9,842,000.00, which exceeds the projected costs of renovation by $2,342,000.00. Howarth derived a value as completed of $16,500,000, which obviously also exceeds the projected cost of renovation.

The difficulty in identifying the potential market for this property arises from the fact that it lies upon the boundary between some of the most desirable residential property in the Memphis area and an economically depressed area that at least historically has been characterized by crime, prostitution and drug traffic. The Debtor believes that the area is experiencing a renaissance, caused in large part by his purchase of this and other contiguous properties and the operation of the new People's Place Car Wash next door. As much as the court would like to believe in the Debtor's vision for the renovation of this property and resulting revitalization of the surrounding area, the sad truth is that in neither the Jacmar case of eighteen months ago nor in either of his individual bankruptcy cases has the Debtor been able to provide any third-party confirmation of his dream. As indicated above, the court delayed the conclusion of the hearing in the Jacmar case for twenty-nine days to permit the Debtor to present proof of potential financing of or investment in the property. He failed to do so. Eighteen months later, the Debtor still cannot provide proof of third-party interest in the property. The Debtor has no available

means of performing the renovations that would be necessary to make this property viable. The Debtor's inability to obtain financing or investment, together with the court's own knowledge of the Memphis area and visit to the hotel site, leads to the conclusion that Glidewell's assessment of the potential market for the property is more accurate than that of Sexton and Howarth. The court does not believe that, even in a fully renovated state, the property would attract significant downtown convention traffic. While the subject property is a relatively short drive from downtown, the most direct route from the downtown area to the property involves navigating some of the poorest areas of the city. The desirable residential areas that admittedly lie within the immediate area of the hotel are to the east of the property, while the drive from downtown lies to the west. The medical center, on the other hand, lies to the north of the property, through a more desirable neighborhood and a shorter drive than that from downtown. While it is true that the Memphis downtown area is expanding and developing at a pace unimaginable just ten years ago, the lack of any third-party interest in the development of this property convinces the court that downtown development has not yet reached the area of the subject property. Based upon the convergence of the original purchase price, Glidewell's testimony and the offer to purchase received by Goldreich, the court finds that the value of the hotel property is $225,000.00. The total outstanding indebtedness secured by the property is at least $1,154,173.79, excluding attorney fees and other costs. The Debtor owns a 30% interest in the real property. The Debtor has no equity in the property. 2 million @ 30% = 600,000.00, 4 million @ 30% = 1,200,000.00.

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CONCLUSIONS OF LAW

Pursuant to 11 U.S.C. § 362(d), a court should grant relief from the automatic stay for cause, including the lack of adequate protection, or when the debtor does not have equity in property and the property is not necessary to a successful reorganization. Although the Trustee raised the issue of adequate protection in closing argument, the court finds that the position of the Trustee is adequately protected. The Trustee's appears to be fully secured by property that does not appear capable of further deterioration. Rather, the Trustee has carried her burden of proving the Debtor's lack of equity in the property. *See* 11 U.S.C. § 362(g)(1). Even if a debtor lacks equity in a particular piece of property, however, relief from the automatic stay can be avoided if the debtor is able to demonstrate that the property is necessary for an effective reorganization. The Supreme Court had provided guidance concerning a debtor's burden under section 362(d)(2)(b):

> What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization *that is in prospect.* This means, as many lower courts, including the en banc court in this case, have properly said, that there must be "a reasonable possibility of a successful reorganization within a reasonable time." 808 F.2d, at 370-71, and nn. 12-13, and cases cited therein. The cases are numerous in which § 362(d)(2) relief has been provided within less

> than a year from the filing of the bankruptcy petition. And while the bankruptcy courts demand less detailed showings during the four months in which the debtor is given the exclusive right to put together a plan, see 11 U.S.C. §§ 1121(b), (c)(2) even within that period lack of any realistic prospect of effective reorganization will require § 362(d)(2) relief.

United Savings Assoc. v. Timbers of Inwood Forest Assoc., Ltd., 484 U.S. 365, 375-76, 108 S. Ct. 626, 633 (footnotes omitted). While this particular bankruptcy case is less than four months old, the court knows that the actual attempts to reorganize this property are at least eighteen months old. The automatic stay terminated in the Jacmar case with respect to this property on December 19, 2000, as the result of the passage of time and Jacmar's inability to show a reasonable likelihood of reorganization. The Debtor has utterly failed to demonstrate that he is any closer to the reorganization now than he was in December of 2000. The court sadly must conclude that there is no realistic prospect for effective reorganization of this property. This conclusion is reinforced by the rather small amount of debt owed to the Trustee relative to the projected value of the renovation project. If the Debtor has a reasonable prospect of being able to launch a multi-million dollar renovation project, he should be able to find a means of paying a $150,000.00 debt. As the court pointed out in Jacmar, payment of the debt owed to the Trustee would free the Debtor (or Jacmar) to pursue his renovation plans. The fact that the Trustee still has not been paid only confirms the court's conclusion that the project is not viable.

Based upon the foregoing, the court finds that the Debtor has no equity in the property and that the property is not necessary to the Debtor's effective reorganization because there is no reasonable likelihood of a successful reorganization within a reasonable time. Accordingly, the motion for relief from the automatic stay is granted. The automatic stay is terminated as to the actions of the Trustee with respect to the real property at 1318 Lamar Avenue, Memphis, Tennessee.

IT IS SO ORDERED.

BY THE COURT,

s/ Jennie D. Latta
JENNIE D. LATTA
United States Bankruptcy Judge

Date: June 7, 2002

APPENDIX E — ORDER GRANTING MOTION TO LIFT STAY FILED BY EDITH NUSBAUM, TRUSTEE FOR DR. MARK NUSBAUM OF THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF TENNESSEE, WESTERN DIVISION FILED FEBRUARY 19, 2002

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

Case No.: 01-37379 JDL
Chapter 11

IN RE:

HARRY P. CONWAY,

Debtor.

ORDER GRANTING MOTION TO LIFT STAY FILED BY EDITH NUSBAUM, TRUSTEE FOR DR. MARK NUSBAUM

Based upon the Certificate of Compliance with LOC. BANKR. R. 9013-1 filed by the Movant, Edith Nusbaum, Trustee for the benefit of Dr. Mark Nusbaum, and there being no objection otherwise known to Counsel for the Movant and considering the case record as a whole, the Court finds that the Motion to Lift Stay filed by Movant should be GRANTED.

IT IS, THEREFORE, ORDERED that the Motion of Edith Nusbaum, Trustee for the benefit of Dr. Mark Nusbaum,

for Relief from the Automatic Stay, is hereby granted; and the stay imposed by 11 U.S.C. § 362(a) is hereby terminated as to the Movant to permit the Movant to pursue its remedies under the Note, Modification to Note, and Deed of Trust as requested in its Motion.

SO ORDERED this 19th day of February, 2002.

s/ Jennie D. Latta
Honorable Jennie D. Latta
U.S. Bankruptcy Judge